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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,240	07/10/2006	Thomas Richard Vitton	0595-1070	7821

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EXAMINER	
PANI, JOHN	
ART UNIT	PAPER NUMBER
3736	

NOTIFICATION DATE	DELIVERY MODE
02/18/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No.	Applicant(s)	
	10/579,240	RICHARD VITTON, THOMAS	
	Examiner	Art Unit	
	JOHN PANI	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 November 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,9 and 11-25* is/are pending in the application.

4a) Of the above claim(s) *4-7* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,9 and 11-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-3, 18-20, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,759,107 to Nagel ("Nagel") in view of US Pat. No. 5,046,721 to Altare ("Altare").

In reference to Claim 1

Nagel teaches a medical examination chair (2, could be used for medical examination) for seating and moving a patient in three substantially perpendicular planes over a large amplitude, said medical examination chair comprising: a stationary column (8a) a primary arc (4) connected to the stationary column via a horizontal shaft (see Fig. 1) that constitutes a first axis of rotation, said stationary column and said first axis of rotation being behind said primary arc (note that "behind" is a relative term and the axis of rotation extends infinitely and at least a portion of it would be behind the primary arc depending on what is the reference point), a second axis of rotation substantially perpendicular to the first axis of rotation that passes through a first end and a second end of said primary arc; a secondary arc (6) that is provided with a seat (30) and that is arranged inside said primary arc, said secondary are secured via a third end

and a fourth end to said first and second end respectively via an upper shaft and a bottom shaft, said primary are and secondary arc being configured for performing rotary movement about said first axis of rotation and said second axes of rotation respectively.

However, Nagel does not explicitly teach a brake that suddenly stops said rotary movement, said brake including at least a first mechanical abutment that suddenly stops said primary arc relative to said stationary column and a second mechanical abutment for suddenly stopping said secondary arc relative to said primary arc.

Altare teaches a human gyroscope in which a mechanical abutment (85) is used to lock the rings and frame together when not being used (Figs. 1 and 5 and col. 4 lines 38-55). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel by including a lock bar on a portion of the frame (for example 10) in order to lock the rings and frame together for storage as taught by Altare. This lock bar would be capable of suddenly stopping 4 relative to 8.

Altare teaches a human gyroscope in which a brake (200) including a mechanical abutment (208) is used to lock rings together so the user can safely mount or exit the device (col. 6 lines 8-67). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Nagel by including a braking means such as that taught by Altare on the inner ring so the user could safely mount or exit the device as taught by Altare. At least 208 could be used to stop the arcs' relative movement.

<u>In reference to Claim 2</u>

Nagel in view of Altare teaches the medical examination chair according to claim 1 (see above) and Nagel teaches including a first motor (40) for setting said primary arc into rotation about said first axis of rotation

In reference to Claim 3

Nagel in view of Altare teaches the medical examination chair according to claim 1 (see above) and Nagel teaches including a second motor (24) for setting said secondary arc into rotation about said second axis of rotation.

In reference to Claim 18

Nagel in view of Altare teaches the medical examination chair according to claim 1 (see above) and Nagel teaches including patient restraining means (28, 29).

In reference to Claim 19

Nagel in view of Altare teaches the device of claim 1 (see above). Altare teaches a first lock (85) that locks the primary arc relative to the stationary column (while this structure is also described as part of the brake, it can serve both functions, and the claim does not require they be separate structures).

In reference to Claim 20

Nagel teaches the device of claim 1 (see above). Altare teaches a second lock (200) that locks the secondary arc in a plurality of positions relative to the primary arc (while this structure is also described as part of the brake, it can serve both functions, and the claim does not require they be separate structures).

In reference to Claim 24

Nagel in view of Altare teaches the medical examination chair according to claim 1 (see above) and Nagel teaches including a control and management member (see col. 4 line 57—col. 5 line 13).

In reference to Claim 25

Nagel in view of Altare teaches the medical examination chair according to claim 1 (see above) and Nagel teaches wherein said primary arc includes a convex portion and is connected to said horizontal shaft via a middle of the convex portion (see Fig. 1).

3. Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel in view of US Pat. No. 4,402,500 to Coles ("Coles").

Nagel teaches a medical examination chair (2, could be used for medical examination) for seating and moving a patient in three substantially perpendicular planes over a large amplitude, said medical examination chair comprising: a stationary column (8a) a primary arc (4) connected to the stationary column via a horizontal shaft (see Fig. 1) that constitutes a first axis of rotation, said stationary column and said first axis of rotation being behind said primary arc (note that "behind" is a relative term and the axis of rotation extends infinitely and at least a portion of it would be behind the primary arc depending on what is the reference point), a second axis of rotation substantially perpendicular to the first axis of rotation that passes through a first end and a second end of said primary arc; a secondary arc (6) that is provided with a seat (30) and that is arranged inside said primary arc, said secondary are secured via a third end and a fourth end to said first and second end respectively via an upper shaft and a

bottom shaft, said primary are and secondary arc being configured for performing rotary movement about said first axis of rotation and said second axes of rotation respectively.

However, Nagel does not explicitly teach a brake that suddenly stops said rotary movement, said brake including at least a first mechanical abutment that suddenly stops said primary arc relative to said stationary column and a second mechanical abutment for suddenly stopping said secondary arc relative to said primary arc.

Coles teaches a gyroscopic device which includes a brake including a mechanical abutment capable of use for suddenly stopping said primary arc (15) relative to a stationary column (12), the mechanical abutment (38, 40) on one lateral side of said stationary column and provided with a ring (38) and a damper (40 could act as a shock absorber), said ring cooperating with a tooth (37) of catch means arranged on the primary arc (see Fig. 7). This system allows the operator to manually adjust the speed of the ring about its horizontal axis (see col. 4 lines 25-40). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Nagel by including a similar braking system so the operator could adjust the speed of the ring about its horizontal axis, for example in case other braking was not working. Depending on the speed of the device, the stop could be sudden, particularly if the speed was not great to begin with.

Cole further teaches a second abutment (48 and/or 45) so that the user can control the speed of the spinning cage (see col. 4 lines 42-55). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles by including such a hand brake so that the user could

control the speed of the device and as a fail-safe. Depending on the initial speed of the device, this system could be used to suddenly stop rotation.

4. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel in view of Altare as applied to claim 1 above, and further in view of US Pat. No. 2,832,245 to Burrows ("Burrows").

In reference to Claim 11

Nagel in view of Altare teaches the device of claim 1 (see above) and Altare teaches the second mechanical abutment is provided with at least one hook (210) arranged on the first end of the primary arc, said hook cooperating with stop means (208) disposed on the third end of the secondary arc (see Fig. 7). However, Altare does not explicitly disclose a damper on the first end of the primary arc. Burrows teaches a socket which is lined with rubber in order to better grip rods (col. 1 lines 60-63). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel in view of Altare by lining 210 with rubber so it would more easily grip rod 208 as taught by Burrows.

In reference to Claim 12

Nagel in view of Altare and Burrows teach the device of claim 11 (see above) and Altare teaches the stop means is retractable (col. 6 lines 59-65).

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel in view of Altare as applied to claim 1 above, and further in view of US Pat. No. 3,774,963 to Lowe ("Lowe").

Nagel in view of Altare teaches the device of claim 1 (see above) but does not explicitly teach that the seat position can be adjusted along the second axis of rotation. Lowe teaches a vehicle seat in which the seat height can be adjusted to allow the seat to conform to various users (col. 3-4). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel in view of Altare by making the seat height adjustable so the device could conform to multiple users as taught by Lowe.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel in view of Altare as applied to claim 1 above, and further in view of US Pat. No. 3,343,875 to Ferrara ("Ferrara").

Nagel in view of Altare teaches the device of claim 1 (see above) but does not explicitly teach that the seat back is adjustable in translation along said second axis of rotation. Ferrara teaches a vehicle seat in which the seat back can be adjusted in a vertical direction to allow it to conform to multiple users (col. 2-3). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel in view of Altare by making the seat back height adjustable so the device could be used by people of various sizes as taught by Ferrara.

7. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel in view of Altare as applied to claim 1 above, and further in view of US Pat. No. 6,264,278 to Weimer et al. ("Weimer").

Nagel in view of Altare teaches the device of claim 1 but does not explicitly teach an adjustable foot rest. Weimer teaches a vehicle seat with a foot rest that is adjustable in height and angle (col. 3-4) so the device can be comfortably used by people of varying sizes. The foot rest increases circulation to the feet compared to letting the feet dangle. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel in view of Altare by including an footrest adjustable in height and angle so the user would have increased circulation compared with unsupported feet, and so the device could be conformed to various sized users as taught by Weimer.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel in view of Altare as applied to claim 1 above, and further in view of US Pat. No. 5,052,754 to Chinomi ("Chinomi").

Nagel in view of Altare teaches the device of claim 1 (see above) but does note teach a headrest that is tiltable and adjustable in translation along said first and second axes of rotation. Chinomi teaches a vehicle head rest in which the device is tiltable and adjustable in translation vertically and horizontally (see Figs. 1-9 and col. 2-5) for increased comfort. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel in view of Altare by

including a headrest that was tiltable and adjustable in translation vertically and horizontally in order to increase user comfort as taught by Chinomi.

9. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,800,062 to Epley ("Epley") in view of Nagel and Altare as applied to claim 1 above.

Epley teaches a medical examination chair (see Figs. 2-3 and at least col. 10 lines 9-30) which is rotatable about a horizontal axis and vertical axis. Epley does not explicitly detail the structure of the chair portion but notes that other designs which can allow rotation of the user about axes could be used. Nagel in view of Altare teaches the device of claim 1 (see above). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the medical examination chair of Epley by making it with the arcs and columns in a configuration such as that taught by Nagel in view of Altare, as this simple substitution of one device design for another would predictably result in orienting a user about multiple axes as taught by both Epley and Nagel in view of Altare. Epley teaches the chair includes at least two position sensors (at least cameras 36 and 38 would sense the position of the various details in their field of vision); at least two movement sensors (col. 11 lines 20-30); and a videonystagmoscope system (col. 12 lines 1-14).

Response to Arguments

10. Applicant's arguments, see pg. 8 lines 8-13, filed 11/9/2009, with respect to claims 16 and 25 have been fully considered and are persuasive. The rejection of 7/7/2009 has been withdrawn.

11. Applicant's remaining arguments filed 11/9/2009 have been fully considered but they are not persuasive. In response to Applicant's arguments that elements 85 and 200 of Altare do not provide a braking function as claimed, it is noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The Examiner maintains that the bar 85 and means 200 of Altare are provided in such a location and have physical dimensions such that it could be used to suddenly stop the arc relative to the frame depending on the speed of the arc. In response to Applicant's arguments that Nagel and Altare do not reach that the stationary column and the first axis of rotation are behind the primary arc, the Examiner respectfully disagrees, and first notes that "behind" is a relative term which requires some reference point, and second notes that an axis is essentially a line which extends infinitely in a direction. Therefore, while the axis of rotation of Nagel passes through the arc of Nagel, it extends such that depending on the reference point at least a portion of the axis could be described as being "behind said primary arc".

12. In response to Applicant's arguments that Coles does not teach a break that stops a rotary movement as recited in claim 1, it is noted that a recitation of the intended

use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. While this particular use of Coles is not expressly disclosed, it is submitted that the structures of Coles cited above are capable of use to stop the rotation suddenly, depending on the initial speed of the device.

13. In response to Applicant's arguments that "EPLEY doesn't describe a medical chair mounted on open structures in the shape of arches, but a huge closed circular device 18", the Examiner notes that the rejection was based on 35 U.S.C. 103(a), and that Nagel and Altare were cited to provide the claimed structural features of the chair. Nagel does not teach away from such a modification, and explicitly states that various designs for orienting a patient can be used (see col. 9 line 55-col. 10 line 7). Therefore this line of argument is not found persuasive. The Examiner maintains that the structure cited above appears capable of the functions as currently claimed. Applicant's arguments that the claimed invention provides various benefits over the cited art are found unpersuasive in the absence of claimed *structural* differences or sufficient evidence of unexpected results or lack of the cited structures' abilities to conduct such functions. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "motion must be precisely operated (manually most of the time) and controlled (camera for following eye movements)") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN PANI whose telephone number is (571)270-1996. The examiner can normally be reached on Monday-Friday 7:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JP/ 2/5/10

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736